

REMARKS

In the Examiner's Office Action dated April 26, 2005 (the "Present Office Action"), the Examiner has stated that "Applicant's arguments with respect to claims 1-4, 8-21 and 25-34 have been considered but are moot in view of the new ground(s) of rejection." (Present Office Action, pg. 2). While the Examiner has rejected claims 1-4, 8-21 and 25-34 based on two different combinations of references, sufficient motivation to combine such cited references has not been provided in the Present Office Action. Applicant respectfully brings to the attention of the Examiner that the lack of motivation to combine the references cited was argued by the Applicant in the November 19, 2004 response to the May 19, 2004 Office Action. Therefore, Applicant respectfully notes that the arguments presented in the November 19, 2004 response are not moot in view of the new grounds of rejection, and Applicant respectfully requests that the Examiner has not addressed those previously raised arguments.

Nonetheless, we address below the new grounds of rejection presented by Examiner in the Present Office Action.

Claim Rejections – 35 USC § 103

Claims 1-4, 8-12, 14-21, 25-29 and 31-34 rejected under 35 U.S.C. 103(a) as being unpatentable over NewVision Hypersystems Inc. hereinafter known as NeoVision in view of Marshall US Patent 5,774,878 and Federal Reserve Bank hereinafter known as FRB.

In the Present Office Action, the Examiner has rejected claims 1-4, 8-12, 14-21, 25-29 and 31-34 under 35 U.S.C. § 103(a) as being unpatentable over NeoVision in view of Marshall and FRB. The Examiner's rejection of independent claims 1 and 18 (and all claims depending therefrom) is respectfully traversed.

As amended, Claim 1 recites a method for displaying the status of a financial indicator using a geographic orientation, said financial indicator representing financial activity in a particular geographic region, said financial indicator including a plurality of sectors and each of said sectors including a plurality of financial instruments, the method comprising the steps of:

displaying a map, said map including said geographic region; and simultaneously displaying on said geographic region of said map a visual indicator that represents the status of said financial indicator, each of said sectors and each of said financial instruments; wherein each of said plurality of sectors has a size and a weighting in the financial indicator, wherein said size of each of said plurality of sectors is proportional to said weighting of each of said plurality of sectors, respectively.

As amended, Claim 18 recites a system for displaying the status of a financial indicator using a geographic orientation, said financial indicator representing financial activity in a particular geographic region, said financial indicator including a plurality of sectors and each of said sectors including a plurality of financial instruments, the system comprising: a data source including the status of said financial indicator; and a mapping engine, said mapping engine having a map including said geographic region, said mapping engine receiving the status of said financial indicator from said data source, said mapping engine outputting a signal for simultaneously displaying on said geographic region of said map a visual indicator that represents the status of said financial indicator, each of said sectors and each of said financial instruments; wherein each of said plurality of sectors has a size and a weighting in the financial indicator, wherein said size of each of said plurality of sectors is proportional to said weighting of each of said plurality of sectors, respectively.

A) The Examiner Has Not Demonstrated A Motivation for One of Ordinary Skill in the Art to Combine the Cited References.

Even if NeoVision, Marshall and FRB included a description of each of the claimed limitations, which they clearly do not, Applicant respectfully submits that a motivation for one of ordinary skill in the art to combine the cited references has not been provided by the Examiner. The Examiner has not demonstrated in the Present Office Action a source for a motivation to combine the references. See In re Rouffet, 149 F.3d 1350, 1357, 47 U.S.P.Q.2d 1453, 1457-58 (Fed. Cir. 1998) (“There are three possible sources for a motivation to combine references: the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the arts.”).

The grounds offered by the Examiner for combining the cited NeoVision, Marshall, and FRB references is “it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify NeoVision in view of Marshall as taught by FRB to enable a user to easily extract patterns and interconnections.” (Present Office Action, pg. 4.) The Examiner has attempted to support this statement by a cursory description of some of the features of each of the cited references which we address in Section C of Remarks below. Notwithstanding the Examiner’s description of those references, however, the Examiner’s statement concerning “one of ordinary skill in the art” simply is without substantiation and does not meet the Examiner’s obligation to succinctly establish a *prima facie* case of obviousness.

The undersigned respectfully submits that a conclusion of the “obviousness” should be supported by some objective evidence. However, the Examiner has provided no objective support for his conclusion.

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. In re Mills, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990) and In re Fritch, 972 F.2d 1260, 23 USPQ2d 1780 (Fed. Cir. 1992).

MPEP 2143.01.

Notwithstanding MPEP 2143.01, the Examiner has not cited where in the prior art there is a teaching or suggestion to make the claimed combination. In fact, Applicant respectfully suggests that it appears that Marshall teaches away from the invention of the current application. All of Marshall’s claims include a limitation for a three-dimensional user interface module having three “axes” within which the financial information is displayed. According to the Merriam-Webster’s dictionary (available online), “axis” has several definitions, most of which describe an axis as a line:

ax·is

1 a : a straight line about which a body or a geometric figure rotates or may be supposed to rotate b : a straight line with respect to which a body or figure is symmetrical -- called also axis of symmetry c : a straight line that bisects at right angles a system of parallel chords of a curve and divides the curve into two symmetrical parts d : one of the reference lines of a coordinate system

- 2 a : the second vertebra of the neck on which the head and first vertebra turn as on a
- pivot b : any of various central, fundamental, or axial parts
- 3 : a plant stem
- 4 : one of several imaginary lines assumed in describing the positions of the planes by which a crystal is bounded and the positions of atoms in the structure of the crystal
- 5 : a main line of direction, motion, growth, or extension
- 6 a : an implied line in painting or sculpture through a composition to which elements in the composition are referred b : a line actually drawn and used as the basis of measurements in an architectural or other working drawing
- 7 : any of three fixed lines of reference in an aircraft that run in the longitudinal, lateral, and vertical directions, are mutually perpendicular, and usually pass through the aircraft's center of gravity
- 8 : PARTNERSHIP, ALLIANCE

Merriam-Webster Online Dictionary (emphasis added). The most appropriate definition in this case is “one of the reference lines of a coordinate system.” This interpretation is consistent with Figures 3 a-d of the Marshall reference, which are described as “examples of a typical screen displays generated by the virtual reality generator of the present invention.” (Marshall, col. 7, lines 43-45). The specification of the Marshall patent is consistent with this axial representation: “[g]enerally, the three axes can represent any category of financial information. For example, one axis can be set to represent countries ...”. Therefore, Marshall appears to teach an invention where countries are represented along an axis of a three-dimensional configuration in a linear fashion, and in consequence Marshall would appear to teach away from displaying financial data on a map, as is required in the invention of the current application.

The undersigned submits that this appears to be a case in which the Examiner's conclusion of “obviousness” is merely based on an application of hindsight reasoning gained by the Examiner's review of the present application. Such hindsight reasoning is impermissible. As the MPEP notes:

The tendency to resort to “hindsight” based upon applicant's disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.

MPEP 2142. Furthermore:

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)

MPEP 2143.

It thus follows then that if the teaching to make the combination is not found in the prior art, then such a teaching may have been impermissibly derived from Applicant's disclosure. The undersigned respectfully requests that the Examiner either withdraw his rejection of the claims or provide some objective evidence of a teaching found in the prior art to make the combination suggested by the Examiner.

Thus, the Examiner's conclusion that it would have been obvious to one of ordinary skill in the art at the time the invention was made is unsupported by the cited NeoVision, Marshall and FRB references.

Moreover, whether or not this is the case, the Examiner has acknowledged that "NeoVision in view of Marshall does not teach displaying data on geographic map." (Present Office Action, pg. 4.) The Examiner thus must rely upon FRB for his conclusion that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify NeoVision in view of Marshall as taught by FRB to enable a user to easily extract patterns and interconnections." (Id.)

The Examiner has not shown that one of ordinary skill in the art of the claimed invention would have had any motivation to combine NeoVision with Marshall and FRB. As previously stated, Marshall appears to teach away from displaying financial data on a map representation. In addition, FRB relates to real estate data. In particular, FRB shows a display of the Relative Median Existing Home Price Index over a map of the US. The Source is the National Association of Realtors. Therefore, FRB, cited by the Examiner, belongs to a different field from that of the invention: real estate, not finance. No indication has been demonstrated by the Examiner that those skilled in the art of the claimed invention, a method and system for graphically presenting financial information, would have an interest in or motivation to combine NeoVision and Marshall with the FRB reference. The Examiner fails to provide a reason why

one of skill in the art would be motivated to combine information from different fields since NeoVision and Marshall deal with finance and FRB deals with real estate.

B) FRB is Not a Valid Prior Art Reference

The Examiner's rejection in light of FRB is respectfully traversed for at least the reason that FRB is not a valid prior art reference. With regard to the date of the FRB reference, although the reference bears a date of April, 1998, there is no showing that this reference was in fact publicly available as of that date. The FRB reference is a publication currently available on the Internet. However, the Examiner has not provided any indication that the reference was available via the Internet or in printed form at any specific prior date. Regardless of the fact that the Examiner may have been able to obtain the reference currently, there has been no showing by the Examiner that this citation meets the requirements of § 102 that the reference be available to the public.

"A reference is proven to be a 'printed publication' 'upon a satisfactory showing that such document has been disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter or art, exercising reasonable diligence, can locate it.' *In re Wyer*, 655 F.2d 221, 210 USPQ 790 (CCPA 1981)" MPEP § 2128. The Examiner has made no showing that FRB was disseminated or otherwise made available such that persons interested and ordinarily skilled in the subject matter or art, exercising reasonable diligence, could have located it.

"Prior art disclosures on the Internet ... are considered to be publicly available as of the date the item was publicly posted. If the item does not include a publication date (or retrieval date), it cannot be relied upon as prior art under 35 U.S.C. 102(a) or (b), although it may be relied upon to provide evidence regarding the state of the art." MPEP § 2128. Here, the date on the first page of the Internet reference cannot be relied upon as a valid or actual publication date (or retrieval date). As such, the FRB cannot be relied upon as a prior art reference.

The FRB reference is unlike a newspaper, magazine or other reference having a notoriously well-known and reliable publishing schedule where based upon a series of prior distributions, one may come to rely on the publication date as indicative of an actual date of

availability to the public. Even were this minimal standard sufficient to show public availability, this reference does not meet that standard, as in this case there is nothing to tie any date on or in the document to the actual date of public availability.

The Examiner has not demonstrated that FRB is a valid reference, and that one of skill in the art would have been interested in it or motivated to combine.

C) The Examiner's Assertions are Unsupported as Cited in the References.

In page 3 of the Present Office Action, the Examiner asserts:

Regarding claims 1 and 18, NeoVision teaches system and method for displaying the status of a financial indicator [page 19], said financial indicator representing financial activity in a particular region [page 19 (exchange)], said financial indicator including a plurality of sectors and each of said sectors including a plurality of financial instruments.

It is unclear what the Examiner means by "representing financial activity in a particular region." There is no representation whatsoever in page 19 (exchange) of NeoVision, and no "particular region" is alluded to. Moreover, the Examiner provides no support for the last part of this sentence. In fact, the Examiner states at page 3 of the Present Office Action:

NeoVision does not teach using a geographic orientation. However, Marshall teaches using geographic orientation [Fig. 3b and disclosure associated with Fig. 3b].

Applicant respectfully notes that there is no reference to a "geographic orientation" nor a "map" in Fig. 3b of Marshall, or the disclosure associated with it, which reads:

"Referring now to FIGS. 3a-3d, these are illustrated four typical screen display generated by the virtual reality generator 4 of the present invention. FIG. 3a shows a top perspective 100 of a virtual reality world. In this example, stock markets are the parameters for a first set of a axis 102 and industry groups are parameters for a second set of axis 104. A financial instrument is displayed represented by a metaphor, being a geometric primitive, such as a polygon or cube (e.g. 106 and 108.) The metaphors are, from this perspective, two-dimensional. When the user travels through the virtual reality world, it can be seen that the world and the primitives are in effect three-dimensional. The colors and shape of the metaphor are significant, as discussed above.

FIG. 3b shows the same virtual reality world as FIG. 3a from the perspective (100a) of a user moving through the virtual reality world."

The mere recitation of country names does not constitute a "geographic orientation" nor a "map", as the claim limitations of the current application require. In fact, the Examiner adds: "NeoVision in view of Marshall does not teach displaying data on geographic map. However, FRB teaches displaying data on geographic map." (Present Office Action, pg. 4) Therefore, the Examiner's assertion regarding Marshall appears to be lacking the requisite substantiation.

The Examiner then adds in page 3 of the Present Office Action:

NeoVision in view of Marshall teaches: displaying a map, said map including said geographic region [Fi. 3b and disclosure associated with Fig. 3b].; and simultaneously displaying on said geographic region of said map a visual indicator that represents the status of said financial indicator, each of said sectors and each of said financial instruments (utilities, oil, trading, leisure), wherein each of said plurality of sectors has a size and weighting in the financial indicator, wherein said size of said plurality of sectors is proportional to said weighting of each of said plurality of sectors, respectively.

Applicant respectfully brings to the attention of the Examiner that the Present Office Action provides no support for NeoVision in view of Marshall teaching "simultaneously displaying on said geographic region of said map a visual indicator that represents the status of said financial indicator, each of said sectors and each of said financial instruments (utilities, oil, trading, leisure), wherein each of said plurality of sectors has a size and weighting in the financial indicator, wherein said size of said plurality of sectors is proportional to said weighting of each of said plurality of sectors, respectively." The Examiner has not provided any reference to a particular section of NeoVision or Marshall to support this assertion. In fact, Applicant respectfully reminds the Examiner that in the Office Action of May 19, 2004, the Examiner admitted that "Marshall in view of SmartMoney does not teach each of said plurality of sectors has a

size and weighting in the financial indicator, wherein said size of said plurality of sectors is proportional to said weighting of each of said plurality of sectors, respectively (e.g. pie chart)." (Office Action of May 19, 2004, pp. 5 and 9).

For at least the foregoing reasons, the Examiner's rejection of claim 1 and 18 under 35 U.S.C. § 103 is improper. For the same reasons that FRB is not a valid prior art reference and that NeoVision and Marshall, with or without FRB, either alone or in combination, fail to disclose the limitations of independent claims 1 and 18, they lack the limitations of dependent claims 2-4, 8-17, 19-21 and 25-34.

As such, Applicant respectfully submits that notice to the effect that claims 1-4, 8-21 and 25-34 are in condition for immediate allowance is respectfully requested.

Claims 1-4, 8-12, 14-21, 25-29 and 31-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over NeoVision in view of Marshall US Patent 5,774,878 and Federal Reserve Bank hereinafter known as FRB and SmartMoney.com hereinafter known as SmartMoney.

In the Examiner's Present Office Action, the Examiner has rejected claims 1-4, 8-12, 14-21, 25-29 and 31-34 under 35 U.S.C. § 103(a) as being unpatentable over NeoVision in view of Marshall US Patent 5,774,878, FRB and SmartMoney. The Examiner has not, however, provided any rationale to substantiate his rejection of claims 1 and 18 over these references, as required by 37 CFR 1.104.

37 CFR 1.104 Nature of examination.

(a) Examiner's action.

(...)

(2) The applicant, or in the case of a reexamination proceeding, both the patent owner and the requester, will be notified of the examiner's action. The reasons for any adverse action or any objection or requirement will be stated in an Office action (...)

(c) Rejection of claims.

(...)

(2) In rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command. When a reference is complex or shows or

describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified.

Because the Examiner has not explained the pertinence of each reference for his rejection, the Examiner's rejection of independent claims 1 and 18 (and all claims depending therefrom) as unpatentable over NeoVision in view of Marshall US Patent 5,774,878, FRB and SmartMoney is respectfully traversed.

Moreover, Applicant respectfully brings to the attention of the Examiner that heatmaps, such as those in the NeoVision and SmartMoney references, are discussed in the Background section of the current Application. As stated in the Application, "prior art heatmaps fail to present financial information using a geographic orientation thereby placing the trader at a disadvantage." (Specification, pg. 4, para. 1).

For at least the foregoing reasons, the Examiner's rejection of claim 1 and 18 under 35 U.S.C. § 103 is improper. For the same reasons that FRB is not a valid prior art reference and that NeoVision, Marshall, FRB with or without SmartMoney, either alone or in combination, fail to disclose the limitations of independent claims 1 and 18, they lack the limitations of dependent claims 2-4, 8-12, 14-17, 19-21, 25-29 and 31-34.

With respect to the Examiner's rejections of claims 13 and 39, the Present Office Action does not appear to provide a full explanation of the basis of the Examiner's rejections. For at least all of the foregoing reasons, the Examiners rejections of such claims under 35 U.S.C. § 103 is improper and is hereby respectfully traversed.

As such, Applicant respectfully submits that notice to the effect that claims 1-4, 8-21 and 25-34 are in condition for immediate allowance is respectfully requested.

Application No. 09/678,902
Reply to the Office Action of April 26, 2005

In the present application, Applicant submits that the Examiner has failed to make out a *prima facie* case of obviousness; accordingly, the Examiner's rejection under § 103 is not supported and it is respectfully requested that it be withdrawn.

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CONCLUSION

For the foregoing reasons, allowance of this application, as amended, is courteously urged.

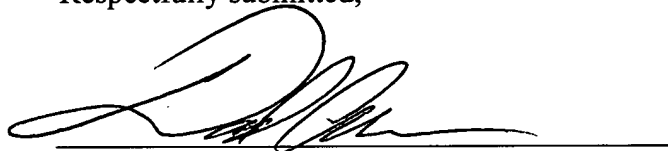
Claims 1-4, 8-21 and 25-34 are now pending and believed to be in condition for allowance. Applicant respectfully requests that all pending claims be allowed.

Early and favorable action is respectfully requested.

Please apply any credits or excess charges to our deposit account number 50-0521.

Respectfully submitted,

Date: October 26, 2005



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